

NTSB Order No. EA-5025

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 3rd day of March, 2003

MARION C. BLAKEY,
Administrator,
Federal Aviation Administration,

Complainant,

v.

PATRICK M. STURGES,

Respondent.

Docket SE-16448

OPINION AND ORDER

Respondent appeals the oral initial decision of Administrative Law Judge William R. Mullins, issued on February 26, 2002.¹ By that decision, the law judge upheld the Administrator's allegation that respondent violated sections 43.12(a)(1), 43.13(a) and 43.15(a)(1) of the Federal Aviation Regulations (FARs) and affirmed revocation of respondent's

¹ The excerpt of the hearing transcript containing the law judge's decision is attached.

Private Pilot and A&P mechanic certificates (including his Inspection Authorization).² We deny respondent's appeal.

² FAR sections 43.12, 43.13, and 43.15, 14 C.F.R. Part 43, provide, in relevant part, as follows:

Sec. 43.12 Maintenance records: Falsification, reproduction, or alteration.

(a) No person may make or cause to be made:

(1) Any fraudulent or intentionally false entry in any record or report that is required to be made, kept, or used to show compliance with any requirement under this part;

* * * * *

§ 43.13 Performance rules (general).

(a) Each person performing maintenance, alteration, or preventive maintenance on an aircraft, engine, propeller, or appliance shall use the methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other methods, techniques, and practices acceptable to the Administrator, except as noted in § 43.16. He shall use the tools, equipment, and test apparatus necessary to assure completion of the work in accordance with accepted industry practices. If special equipment or test apparatus is recommended by the manufacturer involved, he must use that equipment or apparatus or its equivalent acceptable to the Administrator.

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Sec. 43.15 Additional performance rules for inspections.

(a) *General.* Each person performing an inspection required by Part 91, 123, 125, or 135 of this chapter, shall--

(1) Perform the inspection so as to determine whether the aircraft, or portion(s) thereof under inspection, meets all applicable airworthiness requirements;

The Administrator's charges stem from aircraft maintenance and an annual inspection performed by respondent on a Grumman Albatross, N113LA. The Administrator alleged that respondent violated the above-referenced FARs when, on April 21, 2000, he falsely certified in the aircraft log books that the "aircraft was inspected in accordance with a phase one (1), two (2), three (3) and four (4) inspection per FAR 91.409(f)(4) approved maintenance program and is approved for return to service."³

(..continued)

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³ FAR section 91.409, 14 C.F.R. Part 91, provides, in relevant part, as follows:

Sec. 91.409 Inspections.

* * * * *

(f) *Selection of inspection program under paragraph (e) of this section.* The registered owner or operator of each airplane or turbine-powered rotorcraft described in paragraph (e) of this section must select, identify in the aircraft maintenance records, and use one of the following programs for the inspection of the aircraft:

* * * * *

(4) Any other inspection program established by the registered owner or operator of that airplane or turbine-powered rotorcraft and approved by the Administrator under paragraph (g) of this section. However, the Administrator may require revision of this inspection program in accordance with the provisions of § 91.415. Each operator shall include in the selected program the name and address of the person responsible for scheduling the inspections required by the program and make a copy of that program available to the person performing inspections on the aircraft and, upon request, to the Administrator.

* * * * *

Specifically, the Administrator alleged that notwithstanding this annual inspection certification, the aircraft was found several days later to exhibit an engine oil screen that contained an excessive quantity of metal, an inoperative left fuel quantity indicator, a leaking right brake master cylinder, an inoperative left elevator trim cockpit indicator, a frozen upper rudder hinge bearing, left brake pads beyond serviceable limits, a cracked left wing fuel transfer line, and two floor beams that were corroded away at the attachments.

At the hearing, the Administrator called two witnesses, Craig Young and Claude Austin, FAA-licensed mechanics who performed a "pre-buy" inspection of the aircraft several days after respondent's annual inspection certification. They testified that they observed the discrepancies alleged in the Administrator's complaint, and, further, noted that it was obvious that some of the required inspection items had not been performed. For example, they testified that they had to drill out some of the attachment screws to remove the aircraft's floorboards, underneath which they discovered corrosion, and that it was obvious that nobody had recently removed at least some of the screws because there were no marks on the screw heads and because the screws were "frozen" or corroded in place. Similarly, they testified that the binding of the rudder that they observed when they tried to manipulate it was indicative of a frozen bearing, an issue affecting the safety of flight, and that it was obvious that nobody had recently disassembled the

mechanism to inspect it further or repair the problem. Finally, the Administrator introduced a copy of a notarized statement, signed by respondent on April 28th, that indicated, in part, that N113LA "had many discrepancies that were left open making the aircraft not airworthy." The statement, which references the list of discrepancies prepared by Mirabella Yachts during the "pre-buy" inspection, also indicates that although respondent "signed the logbooks as being airworthy, he has since retracted that statement and has advised Mirabella Yachts as well as [the buyer] of the many discrepancies that are still open." According to Mr. Young, the buyer's intent in meeting with Mr. Sturges on the 28th was to ascertain information, because "they had a contract on this aircraft for an airworthy aircraft." Mr. Young, who witnessed respondent sign the statement, testified that respondent and the buyer's representative "conversed back and forth as to how the document should be worded."

Respondent testified that all required maintenance was performed on the airplane, and, in his view, the aircraft was airworthy when he signed the logbook certifications. When asked, on direct examination, about the circumstances regarding the statement he signed on April 26th, he testified:

Ed Saltzman [the buyer's representative] called me and said do you want to meet the new owner of the airplane? And I said, well, I really don't want to drive. He said we'll make it worth your while, because he wants to meet you, and he wants you to continue working on the airplane. So I drove back to the airport.

[Question: And what happened?]

I finally got into the airport. I met Mr. Kanuth [the buyer], and Ed Saltzman, and Craig Young was there, and his secretary.

[Question: Go ahead. What happened next?]

He was telling me that he bought the aircraft, and I said, I don't see it on the ramp, I don't see it running. And he said, oh, we got it over at the World Jet ramp. And I said okay. He says we want you to continue working on the airplane, and we've got a little problem with this engine. And I said, what seems to be the problem?

He said, well, we want Ronnie [Buccarelli] to pay for a new - we think it needs a new engine. He says, so we'd like you to help us resolve that and get that worked out. And then Craig Young got on me and started saying, well, you know, you have forty items. And I said, well, look at the panel missing a screw, and we're going through each one. I says, yeah, that's just stuff that happened in flight. How do I know you didn't break the nut plate? And we got into a little tit and tat. And he says, well, you know what, we're going to go to the FAA.

And at that point, I told him, I said what do you mean? Yeah, we're going to take your licenses. And I says, well, I thought you were going to offer me a job. And he said, well, we would, but you're not helping us, so why should we help you? And one thing got to another and I got very upset.

[Question: You ultimately signed that. Why did you sign it?]

Anything to keep from going to the FAA. I didn't want to get a second mortgage on the house, I didn't want to be where I'm at today. I'd sign anything.

[Question: Did you even read that thing?]

No.

[Question: Do you under --]

I'm upset like I am now. I couldn't get past the first two sentences.

[Question: Have you read it since?]

Not really, because I get upset.

[Question: Do you even understand what it means?]

It says that I -- I signed an airplane bad, unwairworthy is what you said. And I don't understand the rest of it. It's all -- and I wrote this letter, they say.

Transcript ("Tr.") at 204-207. Respondent also called as witnesses Mr. Buccarelli, the seller, and Steven Malin, a non-mechanic pilot who had taken an instructional flight in the aircraft subsequent to respondent's annual inspection certification but before the "pre-buy" inspection. Mr. Malin was unfamiliar with the aircraft and its maintenance, but he did claim that he observed the left fuel indicator to be operative. Mr. Buccarelli testified, essentially, that representatives of Mirabella Yachts, including Mr. Young, observed respondent's annual inspection but did not participate in the work. He also testified about efforts to clarify the airworthiness of the engine after metal particles were discovered, and claimed that the issue was resolved and the engine was determined to be airworthy before respondent signed off on the annual inspection. Finally, he claimed that after the "pre-buy" inspection, the buyer, along with Mr. Young, met with him and demanded a reduction in the purchase price to compensate for the discrepancies they found, and threatened to report the discrepancies to the FAA if they did not agree to a price

reduction. According to Mr. Buccarelli, he and his partner felt this was "extortion" and called off the sale, but, nonetheless, the aircraft was ultimately sold on May 1st to the same buyer for the original price under an "as is/where is" sale agreement (i.e., without the original requirement that it be airworthy).

The law judge credited the testimony of the Administrator's witnesses, particularly Mr. Austin, and noted that their testimony was consistent with respondent's notarized statement. Accordingly, he concluded that the evidence supported the Administrator's allegations and affirmed the revocation order.

On appeal, respondent argues only that the law judge "erred in finding any violations of [Part] 43 as a result of predisposition," and seeks to have us remand to a different law judge for a new hearing. Respondent's arguments are not convincing. For example, respondent states that the Administrator presented "neither photographs nor unbiased witnesses" regarding the discrepancies, but ignores the fact that the law judge observed the Administrator's witness's testimony, including that elicited during cross-examination, and found their version of events to be credible. See Administrator v. Smith, 5 NTSB 1560, 1563 (1986) (deference to credibility determinations, unless shown to be arbitrary or capricious); Chirino v. NTSB, 849 F.2d 1525 (D.C. Cir. 1988) (the Board should reverse a law judge's findings when a witness's testimony is "inherently incredible"). Similarly, respondent offers no proof in support of his allegation that the Administrator's witnesses "blatantly

impeached or otherwise discredited themselves." We have reviewed the entire record, including the hearing transcript, and we find the testimony of Messrs. Young and Austin to be forthright and convincing.⁴

Finally, respondent's argument that Messrs. Young and Austin "fabricated the discrepancies in an attempt to drive down the price of the aircraft on behalf of their employer" finds no support in the direct or circumstantial evidence. In sum, respondent has provided no legal or factual basis to disturb the law judge's rejection of his exculpatory explanations. See Administrator v. Crocker, NTSB Order No. EA-4565 at 7 (1997) ("intense disagreement with the law judge's credibility-dependent findings is not a reason for overturning them"). We affirm the law judge's decision, which we find to be amply supported by this record.⁵

⁴ In contrast, respondent provided clipped explanations regarding many critical aspects of his purportedly-legitimate inspection of N113LA.

⁵ Respondent also submitted with his appeal brief an affidavit from a courtroom observer, alleging that the law judge remarked aloud during a break in Mr. Austin's testimony (the second of the two witnesses sponsored by the Administrator) that "as far as I am concerned, this case is over." Respondent claims that this remark demonstrates the law judge's predisposition. Although we believe that it is always the better practice for our law judges to refrain from commenting on the evidence before the conclusion of a hearing, we note that the law judge's remarks occurred after Mr. Young's testimony and respondent's notarized "confession" had been admitted into evidence. More importantly, respondent has not demonstrated that the law judge's comments were influenced by anything other than the evidence he had thus far observed. The law judge's remark was ill-advised, but there is no evidence that he improperly restricted respondent from presenting relevant evidence or otherwise failed to objectively fulfill his duties. Accordingly, respondent's request for a new hearing on account of

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The law judge's initial decision affirming the Administrator's Order of Revocation is affirmed; and
3. The revocation of respondent's certificates shall begin 30 days after the service date indicated on this opinion and order.⁶

HAMMERSCHMIDT, Acting Chairman, and GOGLIA, BLACK, and CARMODY, Members of the Board, concurred in the above opinion and order.

(..continued)

alleged "predisposition" by the law judge is denied. Cf. Administrator v. Steel, 5 NTSB 239, 243 (1985) ("to be disqualified for bias or prejudice, the bias or prejudice must stem from an extra-judicial source and result in an opinion on the merits on some basis other than what the judge has learned from his or her participation in the case").

⁶For purposes of this order, respondent must physically surrender his certificates to a representative of the Federal Aviation Administration, pursuant to 14 C.F.R. 61.19(f).